limited liability. How far these considerations should move the courts when there is very material departure from the requirements for incorporation is debatable, but the procedural convenience, avoidance of inquiry into details of incorporation, and fairness to all parties may well override a fairly strong legislative policy against treating the associates as though incorporated.

The principal case presents another situation. Between the commission of the tort and the bringing of the suit, the *de facto* corporation has become *de jure*. To allow recovery against the *de jure* corporation is to grant a right against its assets to parties who have a valid remedy elsewhere, to the prejudice of creditors whose claims were acquired by dealing with the new corporation and whose only remedy is, therefore, against those assets. It imposes a pre-natal obligation upon the corporation and is analogous to allowing recovery against it for the tort of its promoters, which is clearly not permitted.[17] The holding of the principal case is therefore indefensible.

RECENT CASES

AGENCY — PRINCIPAL'S LIABILITY TO THIRD PARTY IN CONTRACT — WHERE THIRD PARTY THINKS AGENT IS NOT WITHIN HIS AUTHORITY. — The plaintiff's agent had authority to make contracts without confirmation by his principal. The agent entered into a contract with the defendant on behalf of the plaintiff. In an action by the plaintiff on another transaction, the defendant seeks to recoup for breach of this contract. The court instructed the jury that unless the defendant knew that the agent had authority to contract without confirmation, and relied on such authority, there was no contract. *Held*, the instruction was erroneous. *North Alabama Grocery Co.* v. *J. C. Lysle Milling Co.*, 88 So. 590 (Ala.).

The case decides for the first time, it is believed, whether a good contract results when an agent and a third party purport to make a contract which the latter mistakenly believes not to be within the scope of the agent's authority. The result could clearly not be reached on grounds of estoppel. But, as is now generally recognized, the fundamental principle on which the law of agency rests is not estoppel, but identity, *viz.*, that the acts of an agent within the scope of his authority are the acts of his principal. See *Watteau* v. *Fenwick*, [1893] 1 Q. B. 346; *Kinahan & Co., Ltd.* v. *Parry*, [1910] 2 K. B. 389. The principal case is merely a logical application of this doctrine. Nor is the opposite result required by principles of contract, because of the belief of the third party that he was not entering into a binding obligation with anyone. In the face of his expressed intent to contract, his silent mental attitude is immaterial. See 1 WILLISTON, CONTRACTS, §§ 21, 22.

BANKRUPTCY — JURISDICTION OF FEDERAL COURTS — POWER OF THE DIRECTORS OF A CORPORATION TO FILE A VOLUNTARY PETITION AFTER THE APPOINTMENT OF A RECEIVER BY THE STATE COURT. — A corporation, by its directors, filed a voluntary petition in bankruptcy, and was at once adjudicated and a receiver appointed. It then appeared that a few days previous to these proceedings a state court of proper jurisdiction had, upon petition

[17] Stewart *v.* Mynatt, 135 Ga. 637, 70 S. E. 325 (1911).